

JEFFERSON COUNTY COMMISSIONERS
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KEN WEBER, CHAIR

CHUCK NOTBOHM

TOM LYTHGOE

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
January 9, 2007**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper and Mike Hoffman, County Planners; Joe Carter, Road Supervisor; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Marga Lincoln, *Helena Independent Record*; Bob and Connie Sims, Bob Klein, Celia Wolny, Sabrina Steketee, Joe and Leita Beardsley, Joe Schmaus, Ken Vivrette, Steve Wendell, Gary Zipperian, Kenda Erikson, Richard Schmaus, Tony Prothero

MINUTES

Commissioner Lythgoe moved to adopt the minutes of December 12. Commissioner Notbohm seconded. The motion carried.

Commissioner Lythgoe moved to adopt the minutes of December 19. Commissioner Weber seconded. The motion carried.

Commissioner Weber moved to adopt the minutes of December 27. Commissioner Lythgoe seconded. The motion carried.

Commissioner Weber moved to adopt the minutes of January 2. Commissioner Lythgoe seconded. The motion carried.

CALENDAR REVIEW

- 1/10 Meeting with Great West Engineering - 10:00
RMDC Executive Committee meeting - Helena - noon
Meeting with legislators regarding annexation - 5:00
- 1/11 CTAC - Whitehall - 8:00
Tri-Co Fire - Helena - 9:00
TSEP legislation - 11:00
Library Board meeting - Whitehall - 6:30
- 1/15 Holiday - County offices closed
- 1/16 Fire Council - Basin - 6:00
Horizons meeting - 7:00

COMMISSION REPORTS

Commissioner Lythgoe reported that he received a call from a woman who was loading sand at the Montana City site to put on an access road who was stopped by a Solid Waste employee. She stated that she had permission to do this from the Commission, dating back to 1992. This was discussed in the road meeting this morning and none are aware of the agreement. Commissioner Notbohm stated that they need to consider drawing the line, as we are running short of sand. Commissioner Weber said that they need to talk to Joe, now that they have a name.

SUBDIVISION REVIEW

PRELIMINARY PLAT APPROVAL - PONDEROSA RANCH MINOR SUBDIVISION

Mike presented his staff report. This is a 5-lot minor with lots ranging in size from 14 to 25 acres. He stated that the engineered road plans have been submitted. The developer has contacted the local fire department, and has opted for a cash-in-lieu payment. He recommended that preliminary plat approval be granted. Commissioner Lythgoe moved to grant preliminary plat approval. Commissioner Notbohm seconded. The motion carried.

PRELIMINARY PLAT APPROVAL - HAIRE MINOR SUBDIVISION

Mike presented his staff report; this is a one-lot split north of Montana City, with each parcel consisting of 5.15 acres. The developer has contacted the Montana City fire department and has opted for a cash-in-lieu payment of \$250 per lot. Commissioner Weber asked Mike if the engineered road report has been submitted. Mike stated that it is not required at this time. Commissioner Lythgoe asked if this subdivision needs a road plan. Joe Carter, Road Supervisor, stated that he was out to look at the property on Friday, and he couldn't find it with the drawing that he has. This is a landlocked parcel. Commissioner Lythgoe stated that prior to Joe coming on, he looked at one approach off of Holmes Gulch and one off of South Hills. Ken Vivrette stated that there are two 40-foot easements, so this will just be two driveways. Commissioner Lythgoe stated that he doesn't feel that engineered road plans are needed.

Commissioner Weber moved to grant preliminary plat approval to the Haire Minor Subdivision, with a variance to the requirement of an engineered road design. Commissioner Notbohm seconded. The motion carried.

PRELIMINARY PLAT APPROVAL - AMENDED PLAT - WOODLAND PARK LOT 4

Mike presented his staff report and recommended that preliminary plat approval be granted. Commissioner Lythgoe moved to grant preliminary plat approval. Commissioner Notbohm seconded. The motion carried.

PRELIMINARY PLAT APPROVAL - LaHOOD PARK MINOR

Harold Stepper, County Planner, presented his staff report. This is a single lot split with one lot containing 29.61 acres and the other containing 35.46 acres. Lot 1 contains a residence and Lot 2 has a bar, restaurant and lodging facilities. The purpose of the subdivision is to divide the commercial properties from the residence. Harold recommended that preliminary plat approval be granted. Commissioner Lythgoe moved to grant preliminary plat approval. Commissioner Notbohm seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

DISCUSS AND DECIDE ON DISTRIBUTION OF SCHOOL METAL MINES TRUST MONIES

Commissioner Weber stated that the Commission received a letter from the school districts outlining their request of how to allocate the \$1 million earmarked for the schools at the December 19 meeting. They recommended the following: Boulder Elementary, Jefferson High School, and Clancy Elementary to each received \$310,000 which represents 31% of the total, and Basin Elementary to receive \$70,000 which represents 7% of the total.

Commissioner Lythgoe stated for those that might not be up to speed, \$857,000 of the \$1 million allocated to the schools was already designated to the schools per statute. With this proposal, they are adding schools that have been left out of the distribution in the past. \$142,000 designated to the County was added to the schools' portion to bring the total to an even million dollars.

Commissioner Lythgoe moved to approve the committee's recommendation for distribution of the metal mines trust funds. Commissioner Weber seconded and called for discussion. Commissioner Notbohm stated that he was curious how they came up with the 7% figure for Basin, and asked if they used a formula. Bob Klein stated that the committee looked at several standards to come up with distribution. Basin has about 2.5% of the students. The committee felt that 7% was close to what their original request was. Commissioner Notbohm stated in talking with them regarding financial problems they're having, he was hoping to see a little more money go to Basin. Mr. Klein stated that it is his understanding that Basin is satisfied with their amount. Commissioner Lythgoe noted that Basin's original request was for \$20,000. This amount is significantly higher and he thinks \$70,000 is appropriate. Commissioner Notbohm stated that percentage-wise, Basin is impacted as much as anyone. Commissioner Lythgoe stated that what Mr. Klein presented indicates 7% is over and above what they are impacted, and noted that Basin agrees with the recommendation. The motion carried.

DISCUSS AND DECIDE ON RECOMMENDATION FROM SCHOOL BOARD COMMITTEE REGARDING METAL MINES LICENSE TAX DISTRIBUTION

Commissioner Weber stated that the same letter from the school board committee recommended that future allocation of the metal mines license tax give Boulder elementary 40%, Clancy elementary 55%, and basin elementary 5%.

Commissioner Lythgoe moved to adopt the recommendation of the committee for distribution of the annual hard rock funds, and their percentages. Commissioner Notbohm seconded, and noted that, again, he would like to see Basin get more money. Commissioner Weber stated that there is justification on both allocations based on the percentages. Commissioner Lythgoe asked if Basin was involved in the discussion. Sabrina stated that they were, but they agree with Commissioner Notbohm; they would like a bigger share. They will continue to watch the figures and review. They ran the numbers and tried to give Basin the most they could, without hurting the other schools. Commissioner Notbohm stated that in his opinion, Basin has been impacted, who

knows how much over the years. He would like to see 5% from Clancy to go to Basin. Commissioner Weber stated that the license tax is subject to yearly review, and they can address the future in the future. This year the figures are:

Clancy Elementary	\$4,645.02
Boulder Elementary	\$3,378.20
Basin Elementary	\$ 422.28
Jefferson High School	\$8,445.50

Commissioner Weber noted that the amounts will increase in the future, with the mine back in production.

The motion carried, with Commissioners Weber and Lythgoe voting aye and Commissioner Notbohm voting nay. Sabrina stated that the Commission will be getting a request from the committee to request the mines track enrollment.

BOB SIMS DISCUSS FEASIBILITY OF FORMING A LOWER JEFFERSON RIVER WATERSHED COUNCIL

Bob Sims stated that there are five watershed councils in the area, who meet to discuss the Missouri Headwaters. Most people have no idea who they are or what they do; this is a national movement. These groups are made up by and large with self-appointed people with no accountability. All watershed councils have coordinators, which is a paid position, who acts as an organizer. They are also grant writers who, if successful, get a cut of the money. The coordinators have a vision to protect and restore waterways, but not to protect landowners, the economy, water rights, etc. They are also trying to gain control of surface water. Bob asked what we are to do; they can't be stopped as they are too entrenched. He stated that one of the Commissioners needs to get involved - go to meetings and try to protect the interests of Jefferson County, as the impact could be huge. They also need to actively compete with these groups and look at forming our own watershed council. He stated that the Commissioners, as elected officials, need to look into this. The watershed would cover about 1 million acres, most in Jefferson County. Bob noted that when it comes to getting grants, the amount of land in the watershed is important. He would suggest involving Madison County as well. Bob stated that if they think the mine closing will impact the county, they haven't seen anything yet, if the watershed council controls the water. He noted that they also want to direct grazing.

Commissioner Weber asked how far along in the formation of the watershed group he is. Bob stated that he is starting here. Commissioner Lythgoe has agreed to help, as has Matt Johnson. They next need to scope public interest. Commissioner Weber asked Bob if he plans to form a 501 (c) (3). Bob stated that the only reason to do that is if they are going to get money. What he really wants to do is to give the state and federal governments information that the Jefferson River watershed doesn't speak for Jefferson County. Commissioner Weber stated that a 501 (c) (3) would be a good idea, as the state and federal governments ask how they are organized as a group. Bob stated that they can't start and get so many irons in the fire that they can't get anything done. They just need to get started. Commissioner Weber noted that there is also the Prickly Pear watershed on the north end of the county. Also, TMDLs are going to be gaining

speed nationally, which is one reason that watersheds have a coordinator that can focus all of their attention on the task at hand. Bob stated that he has no problem with hiring a coordinator on a cash basis.

Commissioner Weber asked when the Jefferson River watershed started back up. Bob stated that they hired a coordinator prior to the 29th. Commissioner Weber said that he will be getting back into the loop, and if Commissioner Lythgoe has agreed to help with the new group that will be great. He asked Bob what he wants to accomplish. Bob stated that they need to make the state and federal governments aware that the Jefferson River watershed does not speak for Jefferson County and added that if the commissioners have some money laying around he could use some.

Commissioner Notbohm stated that he hasn't followed the issue, but one thing that concerns him is that a large amount of water doesn't make it to the Jefferson River. Bob agreed, noting that a few years ago the Boulder River ran dry at his place and he was concerned with keeping livestock taken care of. Commissioner Notbohm stated that the amount of water coming in has decreased over the years. Commissioner Weber stated that it sounds like Bob is biting off a good chunk to get started on.

Joe Beardsley stated that it is the upper Jefferson River watershed committee that has stirred up their interest. He has been told that the plan is to standardize land use planning regulations. Along the Big Hole River, there are 8 sections that were lost due to set-backs, with no compensation to landowners for loss of developable land. People on the lower Jefferson River don't want the upper Jefferson River talking for them. He stated that the Commission will probably see a recommendation for land use planning from that group. The people on the lower Jefferson want to make their own recommendation for their area; no environmentalists, just locals. Leita Beardsley concurred with Joe's comments.

JOE SCHMAUS - DISCUSS AND DECIDE ON SHEEP MOUNTAIN RMD

Joe Schmaus stated that he has made significant progress with the BLM. The previous day he spoke with them and the right-of-way agreement is on its way to the Butte office. He hopes to have it in hand in a week, and on or before June 15 of this year he will have an easement. Commissioner Weber stated that once the road question is ironed out Joe will present an application for an RMD. Harold Stepper, County planner, explain the way the process works. He said that first a petition for the RMD needs to be filled out by a landowner. He stated that this is a new twist; the area in question is currently in the subdivision process and has one owner. When the petition is certified by the clerk and recorder it is then presented to the commission for a resolution. Money flows into the treasurer's office who is entitled to take a 10% administration fee. He stated that this may be a bit premature until they know where the road will lie. Joe stated that this will all be worked out soon. The reason they want to form the RMD before the subdivision is complete is that it makes more sense to them to do this up front and lock everyone in. This will guarantee the roads will be maintained. These roads will access the subdivision as well as public land.

Commissioner Weber stated that there is nothing to do until they submit an application. Joe stated that he wanted to make sure that the commission is amenable to this before he goes

through the process. Commissioner Lythgoe stated that he feels this is a good idea, but it is premature for a decision. Commissioner Weber agreed that he feels it is a good idea also, but to make a decision they need to have a petition.

DISCUSS DETERMINATION OF CLARK CREEK ROAD AS A COUNTY ROAD

Commissioner Weber stated that as he remembers it, Joe was in discussions with the BLM to possibly reroute this road around the Hill property. Joe stated that there is no way to do this; the road will still have to cross Hill property. Joe went on to note that there is no question that this is a petitioned County road. The road cuts through Hill property and it is hard to say that they were not aware that this was a County road when they bought the land. Joe said that to move the road the county would have to abandon the road and then realign it several hundred feet west of the Hills buildings. The BLM can't make it easy with a swap, as there would be paperwork, fees, etc.

Joe said that he feels his argument is just; this has been County road from 1868 until today. There is no evidence that it was ever abandoned. He has tried and wants to be neighborly, but he has been threatened to be shot, to be killed, as has his father. There is firm evidence that this is a County road and the Commission needs to tell the Hills that this is the way it is. Joe stated that he would rather not deal with this and use Holmes Gulch, but it will cost a fortune to bring that road up to County standards. Clark Creek is a County road. He has a right to use a County road to access his property.

Commissioner Notbohm stated that there is no question in his mind that this is a County road and Joe has a right to use it. If the Hills don't want people to use the road, they need to work with us. Joe stated that he appreciates this and asked what is to be done. Commissioner Notbohm stated that they need to have the County Attorney write a letter to the Hills that if they do not want traffic through their yard, the road will need to be moved. Joe noted that the road was there when the Hills bought the property in the 60s; his father used the road in the 50s and the Bomparts have been using the road for years.

Commissioner Lythgoe stated that an encroachment permit would be needed. He said that he is not in favor of this, and noted that if this was Joe's property, he also wouldn't want the world driving through his yard. Joe stated that his family gave up land in an agreement so that they would have access. He agreed that if he was Jim Hill, the last thing he would want would be a road through his yard. Commissioner Lythgoe noted that Joe's property is significantly different, as it has no improvements. The Hills have buildings right up to the road. He asked about a solution. Joe stated that the solution is "tough luck". However, he is willing to do whatever he can to not harm the Hills.

Commissioner Weber stated that he misunderstood what Joe's intentions were. He will contact the BLM and see what he can find out. He hopes for a better solution to this. Joe noted that even if the road is improved to county specifications, he doesn't think that it will be any closer to the Hills than many homes on county roads in the county. He would appreciate it if the Commission would direct the County Attorney to write the Hills a letter.

Commissioner Lythgoe asked Joe how long he has owned his land. Joe stated that he bought the land in 2000, and the previous owners had the land since the 1920s. Commissioner Lythgoe asked when he bought the land, if he considered at all that it had poor access. Joe stated that if he wanted to put in a mobile home, he would have no way to get the pieces in. His land is five miles from Helena, two miles from Montana City and the land borders two non-maintained county roads, and he can't get to it.

Commissioner Notbohm stated that he feels they have kept Joe waiting long enough; a letter needs to be addressed to the Hills. Joe stated that there is no argument that the Hills can present that this is not a county road. The Bomparts went through four or five attorneys to debunk his claim that this is a county road. Commissioner Notbohm stated that the Hills could have petitioned to close the road; this was not done, so they need to deal with this.

Commissioner Weber stated that this issue will be pursued, and he will contact Joe. Joe stated that he would like to have something accomplished before spring thaw.

Commissioner Lythgoe moved to adjourn the meeting. Commissioner Notbohm seconded.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER